

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
SE/8 of Duncan Lane, 195' NW * ZONING COMMISSIONER
from c/l of Harford Road *
Rear of 2927 Chenoak Avenue * OF BALTIMORE COUNTY
9th Election District *
6th Councilmanic District * Case Nos. 94-175-SPH
Donald Chenoweth
Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for the subject property located immediately behind 2927 Chenoak Avenue in the Carney section of Baltimore County. The Petitioner seeks relief, pursuant to the Petition for Special Hearing, for approval of the property as a nonconforming use, to allow a construction equipment/materials storage yard. The relief requested and subject property is more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Special Hearing.

Appearing at the public hearing held for this case was the Petitioner, Donald Chenoweth. Also appearing were members of Mr. Chenoweth's family/interested persons, namely, Edward Chenoweth and Frances L. Chenoweth. The Petitioner was represented by David M. Meadows, Esquire. Appearing in opposition to the request was David Watkins and Ed Dudderar.

Testimony and evidence presented by the Petitioner was that the subject property is located to the rear of a lot owned by the Petitioner known as 2927 Chenoak Ave. As shown on the site plan, 2927 Chenoak Avenue is a narrow, yet deep, lot which is improved by a 1-1/2 story single family framed dwelling. The lot is approximately 268 ft. deep and approximately 58 ft. wide. Mr. Chenoweth indicated that he and his wife reside on that property and have lived there since approximately 1957. To the rear

of that lot is a smaller parcel co-owned by Edward Chenoweth and his mother, Margaret Chenoweth. A portion of that lot, 57 ft. x 60 ft. is the subject of the requested nonconforming use designation. That small square shaped parcel is at the extreme rear of the residential lot and abuts a small alley known as Duncan Lane.

Mr. Chenoweth further testified that he is engaged in the home building and improvement business and has been so employed for many years. He indicated that his father had also been a home builder and he began working for his father's company full time upon his graduation from high school in June of 1944. Mr. Chenoweth related a lengthy history of his business and that of his father which included the construction of many homes in the Carney area. Apparently, the elderly Mr. Chenoweth was well known as a homebuilder in this part of Baltimore County during the first half of this century.

Mr. Chenoweth's knowledge of the subject property dates prior to when he began his employment in 1944. He testified that he remembers playing on this property as a child. The property has been owned by members of the Chenoweth family for many, many years.

Mr. Chenoweth also testified that the subject property has been used as a place to store building materials and construction equipment for as long as he can remember. Originally, his father utilized this property for that purpose and he has utilized it since he took over the business. Mr. Chenoweth specifically testified that often he and his father would have construction materials delivered directly to homesites for home building. When a given project was complete, excess material would be stored on the subject property until another job required use of those materials. Thus, Mr. Chenoweth testified that materials were constantly being stored and removed from the property as business required. The items

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stored on the property included sand, gravel, brick, block, lumber and similar materials and equipment. Mr. Chenoweth also produced an old ledger from his father's business and old photos showing the use of the property as described. Moreover, Mr. Chenoweth testified that the property has been used continuously in this manner since well prior to 1955, with no interruptions.

A neighbor, David Watkins testified briefly in opposition to the request. Apparently, he and the Chenoweths do not have a good relationship. It is worth noting that Mr. Watkins has only been involved in the neighboring property since the Spring of 1993. He leases a portion of this adjacent property, which fronts Harford Road, to operate his business. Thus, he has little personal knowledge of the history of this site.

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKenny v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

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Those original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

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od of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

As with all nonconforming use cases, the first task is to determine what lawful nonconforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

It is clear that a construction equipment/materials storage yard has existed on this site since before that date. The testimony was uncontested and complete in this respect. Thus, it is clear that the Petitioner has satisfied his burden to establish that the nonconforming use existed on this site prior to the adoption of zoning in Baltimore County in 1945.

The second test to be applied, as specified in Section 104.1, is whether or not there has been a change, abandonment and/or discontinuance in the use of the subject property. If so, the nonconforming use cannot be continued.

In this respect, the testimony was also compelling that the use is identical now, as has been in the past. Clearly, the nature of the use has been to accommodate the Petitioner's business. It is clear that this Petitioner has engaged in home improvements/building for many years. Thus, there has been no change, abandonment or discontinuance of the use. For these reasons, the Petition for Special Hearing must be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 3rd day of December, 1993, that, pursuant to the Petition for Special Hearing, approval of the property as a nonconforming use to allow construction equipment/materials storage yard, be and is hereby GRANTED, subject, however, to the following restriction which are conditions precedent to the relief granted herein:

1. The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

LBS/mnn

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

November 30, 1993

David M. Meadows, Esquire
Carney, Ryan and Lattanzi
4111 East Joppa Road
Baltimore, Maryland 21236

RE: Case No. 94-175-SPH
Petition for Special Hearing
Donald L. Chenoweth, Petitioner

Dear Mr. Meadows:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LBS/mnn

cc: Mr. Donald L. Chenoweth
2927 Chenoak Avenue
Baltimore, Maryland 21234

cc: Mr. David Watkins
9212 Harford Road
Baltimore, Md. 21234

Petition for Special Hearing
94-175-SPH
to the Zoning Commissioner of Baltimore County
for the property located at Lot immediately behind 2927 Chenoak Avenue,
Tax Map 71, Parcel 806
which is presently zoned D.R.5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commission should approve a Nonconforming Use as defined in Section 101 of the BCZR, to wit a construction equipment/materials storage yard, in the rear of the property as more particularly described in the Plat attached to this Petition.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchase/Lessor:

Type or Print Name: _____
Signature: _____
Address: _____
City: _____ State: _____ Zip: _____

Attorney for Petitioner:

David M. Meadows
Type or Print Name: _____
Signature: _____
Address: _____
City: _____ State: _____ Zip: _____

Legal Owner(s):

Mrs. Margaret Chenoweth
Type or Print Name: _____
Signature: _____
Address: _____
City: _____ State: _____ Zip: _____

Donald L. Chenoweth
Type or Print Name: _____
Signature: _____
Address: _____
City: _____ State: _____ Zip: _____

Edward Chenoweth
Type or Print Name: _____
Signature: _____
Address: _____
City: _____ State: _____ Zip: _____

Carney, Ryan and Lattanzi
Type or Print Name: _____
Signature: _____
Address: _____
City: _____ State: _____ Zip: _____

17271176

MAISTE & WATTS, INC.
SURVEYORS AND ENGINEERS

2923 Chenoak Avenue
Baltimore, Maryland 21204
(301) 882-0321

OCTOBER 5, 1993

**DESCRIPTION OF REAR OF #2927 CHENOAK AVENUE
TO ACCOMPANY PETITION FOR NON-CONFORMING
USE, 9TH ELECTION DISTRICT,
BALTIMORE COUNTY, MARYLAND**

BEGINNING FOR THE SAME ON THE SOUTHEAST SIDE DUNCAN LANE,
16.5 FOOT WIDE PRIVATE ROAD, AT THE DISTANCE OF 195 FEET,
MEASURED NORTHWESTERLY ALONG SAID SIDE OF DUNCAN LANE FROM
ITS INTERSECTION WITH THE CENTERLINE OF HARFORD ROAD,
MARYLAND RT. NO. 147, THENCE LEAVING SAID PLACE OF BEGINNING
AND RUNNING ALONG THE SOUTHEAST SIDE OF DUNCAN LANE,
1) NORTH 46 DEGREES 30 MINUTES 00 SECONDS WEST 61.24 FEET,
THENCE LEAVING DUNCAN LANE AND RUNNING THE THREE FOLLOWING
COURSES AND DISTANCES, VIZ:
2) NORTH 41 DEGREES 30 MINUTES 00 SECONDS EAST 57.03 FEET,
3) SOUTH 46 DEGREES 30 MINUTES 00 SECONDS EAST 60.47 FEET,
AND
4) SOUTH 40 DEGREES 44 MINUTES 00 SECONDS WEST 57.07 FEET TO
THE PLACE OF BEGINNING.

CONTAINING 3,472 SQUARE FEET OR 0.08 ACRES OF LAND.



176-176

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 11/1/93
Posted for: Special Hearing
Petitioner: Margaret Chenoweth, Donald L. Chenoweth
Location of property: Rear of 2927 Chenoak Avenue, public rear of 189/5
Duncan Lane, 189/5 NW from Harford Rd
Location of signs: Along 2927 Chenoak Ave. Property rear 2927
from rear of Chenoak Ave.
Remarks: _____
Posted by: M. Maiste Date of return: 11/5/93
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD. Nov. 5, 1993

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper published
in Towson, Baltimore County, Md., once in each of 1 successive
weeks, the first publication appearing on Nov. 4, 1993.

THE JEFFERSONIAN,

A. Henricson
LEGAL AD. - TOWSON
Publisher

Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Date: 10-22-93

DONALD CHENOWETH
2927 CHENOAK AVE.

040 - SPH - \$ 250.00
080 - SGH - \$ 35.00
TOTAL = \$ 285.00

0240280132WICMRC \$285.00

Please Make Checks Payable To Baltimore County

Receipt Number

receipt
94-175-SPH
Account: R-001-0180
Number: 176
R.T.T.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to
the general public/neighborhood property owners relative to property
which is the subject of an upcoming zoning hearing. For those petitions
which require a public hearing, this notice is accomplished by posting
a sign on the property and placement of a notice in at least one
newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and
advertising are satisfied. However, the petitioner is responsible for
the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be assessed and paid to this office at the
time of filing.
- 2) Billing for legal advertising, due upon receipt, will come
from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

Carl John
ARNOLD JARON, DIRECTOR

For newspaper advertising:

Item No.: 176
Petitioner: Donald Chenoweth & d.
Location: Rear 2927 Chenoak Ave.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: David M. Meadows, Esq.
ADDRESS: 4111 E. Joppa Rd.
Baltimore, Md. 21236
PHONE NUMBER: (410) 527-4600

AJ:ggs

(Revised 04/09/93)

COPY

TO: PETERSON PUBLISHING COMPANY
November 4, 1993 Issue - Jeffersonian

Please forward billing to:

David M. Meadows, Esq.
4111 E. Joppa Road
Baltimore, Maryland 21236
410-527-4600

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore
County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-175-SPH (Item 176)
Rear of 2927 Chenoak Avenue
SE/8 of Duncan Lane, 195' NW from c/l of Harford Road
9th Election District - 6th Councilmanic
Petitioner/Owner(s): Margaret, Donald, and Edward Chenoweth
HEARING: NOVEMBER 24, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing approval of nonconforming use of a construction equipment/materials storage yard in the
rear of the property.

LAWRENCE E. SCHUCHT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE UNRECORDED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3351.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore
County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-175-SPH (Item 176)
Rear of 2927 Chenoak Avenue
SE/8 of Duncan Lane, 195' NW from c/l of Harford Road
9th Election District - 6th Councilmanic
Petitioner/Owner(s): Margaret, Donald, and Edward Chenoweth
HEARING: NOVEMBER 24, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing approval of nonconforming use of a construction equipment/materials storage yard in the
rear of the property.

cc: Donald and Margaret Chenoweth
David M. Meadows, Esq.
David Schuch

NOTES: (1) HEARINGS ARE UNRECORDED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) HEARINGS ARE UNRECORDED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3351.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

November 15, 1993

David M. Meadows, Esquire
Moore, Carney, Ryan and Lattanzi
4111 East Joppa Road
Baltimore, Maryland 21236

RE: Case No. 94-175-SPH, Item No. 176
Petitioners: Margaret Chenoweth, Donald L. Chenoweth,
and Edward Chenoweth
Petition for Special Hearing

Dear Mr. Meadows:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans
submitted with the above referenced petition. The attached comments from
each reviewing agency are not intended to indicate the appropriateness of
the zoning action requested, but to assure that all parties, i.e., zoning
commissioner, attorney and/or the petitioner, are made aware of plans or
problems with regard to the proposed improvements that may have a bearing
on this case.

Enclosed are all comments submitted thus far from the members of ZAC
that offer or request information on your petition. If additional
comments are received from other members of ZAC, I will forward them to
you. Otherwise, any comment that is not informative will be placed in the
hearing file. This petition was accepted for filing on October 22, 1993,
and a hearing was scheduled accordingly.

The following comments are related only to the filing of future
zoning petitions and are aimed at expediting the petition filing process
with this office.

1. The director of Zoning Administration and Development Management
has instituted a system whereby seasoned zoning attorneys who
feel that they are capable of filing petitions that comply with
all aspects of the zoning regulations and petitions filing
requirements can file their petitions with this office without
the necessity of a preliminary review by zoning personnel.



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

10-29-93

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: 4176 (KT)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to
approval as it does not access a State roadway and is not effected by any State Highway
Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for DAVID N. LITTLE, ACTING CHIEF
John Constantine, Chief
Engineering Access Permits
Division

BS/

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-3660 (Toll Free)

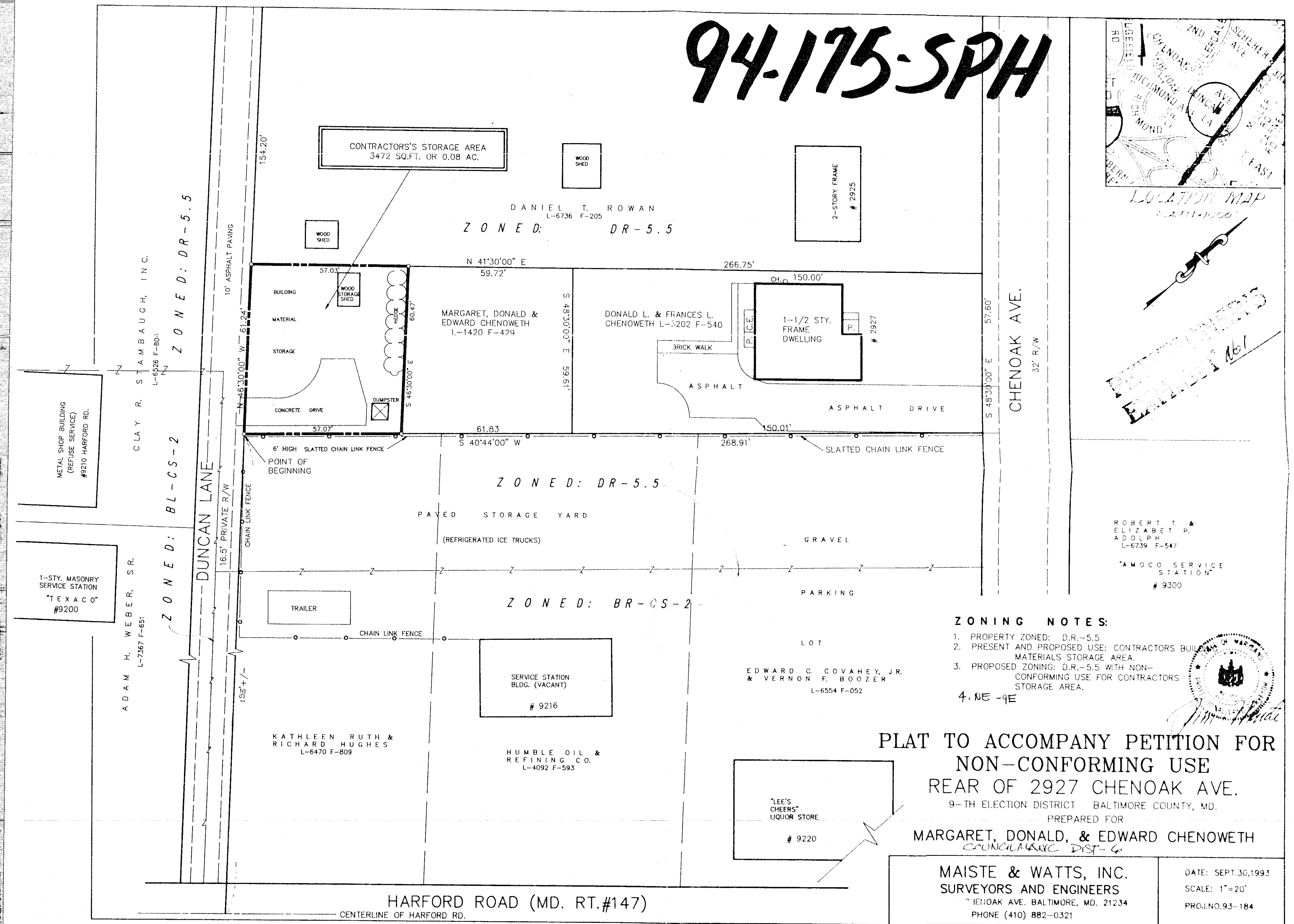
Mailing Address: P.O. Box 777 • Baltimore, MD 21202-0777
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BA



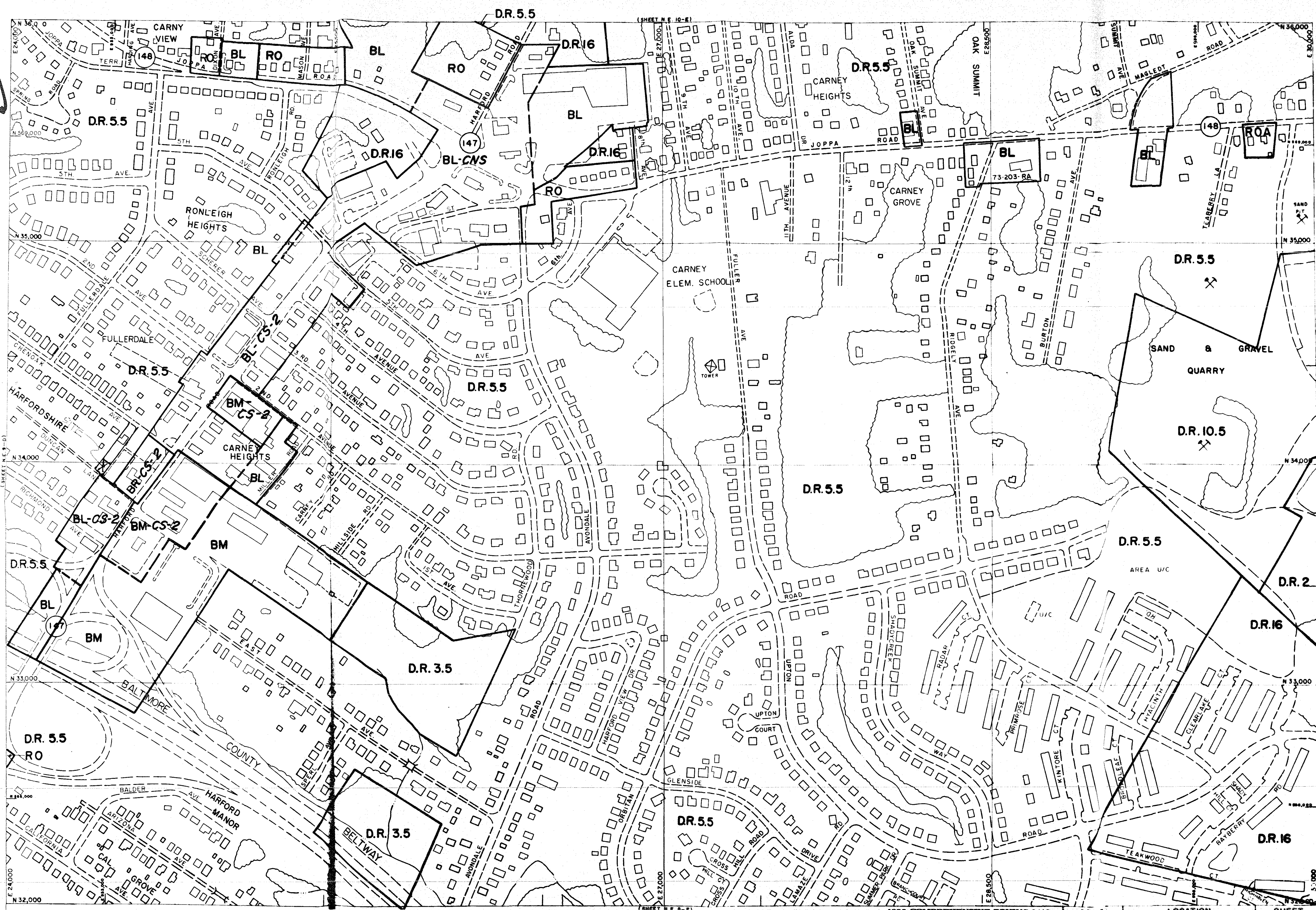
3B

1962



ITEM # 176

94-175-SFH



N-NE M-NW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

See Nos. 163-02, 164-02, 165-02, 166-02, 167-02, 168-02, 169-02

William A. Howard
Chairman, County Council

SCALE 1" = 200'	LOCATION PARKVILLE	SHEET N. E. 9-E
DATE OF PHOTOGRAPHY JANUARY 1986		